

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
CenturyLink Petition for Limited Stay)	

**OPPOSITION OF NCTA – THE INTERNET & TELEVISION ASSOCIATION
TO CENTURYLINK STAY PETITION**

NCTA – The Internet & Television Association (NCTA) opposes the Petition for Limited Stay filed by CenturyLink in the above-referenced proceeding.¹ Rather than granting a stay of a transition process that has been scheduled since 2011, the Commission should focus on resolving the tandem transport issues that are still pending in this rulemaking.

INTRODUCTION

CenturyLink’s petition seeks a stay of a narrow component of a multi-year transition process, adopted in 2011 and affirmed on appeal in 2014, that has required thousands of companies to reduce their rates for a variety of functions provided to other carriers.² Just weeks before the next stage of this transition, CenturyLink asserts that a stay is necessary with respect to the required reduction of rates for tandem transport service by certain carriers.³

¹ Petition for Limited Stay of Transformation Order of CenturyLink, WC Docket No. 10-90, *et al.* (filed Apr. 11, 2017) (Petition).

² *Connect America Fund, et al.*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*ICC Transformation Order*), *aff’d sub nom., In re: FCC*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014).

³ Petition at 2-3.

CenturyLink’s stay request is premised on two primary concerns. First, CenturyLink states that a stay is necessary because the rules regarding this aspect of the rate transition are ambiguous. In particular, CenturyLink suggests that there is ambiguity with respect to the meaning of the term “affiliates” in the rules and, based on informal discussions with Commission staff, “there is now considerable potential for debate and disagreement” regarding how those rules will apply to competitive local exchange carriers.⁴

Second, absent a stay, CenturyLink argues that the rules will apply in an asymmetrical manner wherein the “transition to bill and keep applies to tandem services in some contexts but the identical service is not subject to the transition” in other instances.⁵ In particular, CenturyLink is concerned that it will be required to reduce its rates for tandem transport service while other carriers would be spared from such reductions at this time.⁶ As demonstrated below, CenturyLink has not made the case that a stay is warranted on either ground.

I. CENTURYLINK HAS NOT DEMONSTRATED THAT A STAY IS WARRANTED

None of the arguments advanced by CenturyLink is sufficient to satisfy the Commission’s standard for granting a stay. As an initial matter, other than a conclusory statement in the final paragraph of the Petition, CenturyLink does not even attempt to show how its argument satisfies the four-part test applied by the Commission.⁷ The Petition makes no attempt to explain how CenturyLink “has a substantial prospect of prevailing on the merits” (or even what proceeding it will prevail in), it has identified no “irreparable injury” that it will suffer

⁴ *Id.* at 7

⁵ *Id.* at 8.

⁶ *Id.*

⁷ *Id.* at 13.

absent a stay, and it has failed to acknowledge the harm to hundreds of other parties that will be forced to pay higher rates for tandem transport services if a stay is granted.

Moreover, the notion that a stay is warranted simply because the rules are ambiguous is not compelling. As noted above, the Commission's 2011 reform of its intercarrier compensation rules has required thousands of companies to reduce rates in stages over a multi-year transition process. This is hardly the first time that the Commission's complicated scheme for reforming the legacy intercarrier compensation regime has led to questions within the industry regarding the precise meaning of certain rules. Indeed, such a transition likely never could have happened if absolute clarity was required for each and every rate change required under the rules. If CenturyLink had concerns about what entities would be considered "affiliates" for purposes of the rule, it should have raised those concerns years ago. In that sense, CenturyLink's request is more in the nature of a late-filed petition for reconsideration and should be denied accordingly.

If the Commission agrees with CenturyLink that the transition rules at issue are problematic, it can simply issue a clarification. In addition, CenturyLink states that Commission staff has been responsive to requests for informal guidance to resolve outstanding questions and concerns.⁸ In short, the Commission undoubtedly can address, either formally or informally, any remaining interpretive issues in advance of the 2017 annual tariff filings, including those raised by CenturyLink.

Similarly, any potential asymmetry across carriers does not justify a stay. Given the complex nature of this proceeding, there have been many points at which different carriers were subject to different rules and expectations (and in most cases those differences have been to the benefit of incumbent LECs like CenturyLink, e.g., the right of first refusal to receive billions of

⁸ *Id.* at 6.

dollars from the Connect America Fund). We agree with CenturyLink that the Commission should address the tandem transport issues raised in the 2011 Further Notice of Proposed Rulemaking in a manner that treats all carriers the same.⁹ But the pendency of these long-standing issues does not justify the relief that CenturyLink requests in its eleventh-hour petition, even if the result is disparate treatment for different types of carriers for some interim period. To the extent the Commission is moving toward eliminating intercarrier compensation for all rate elements,¹⁰ the fact that tandem transport reductions are not required of all companies at this time is no reason to suspend the reductions that are clearly required of some companies.

Moreover, grant of the requested stay would run counter to the public interest goals of the Commission's intercarrier compensation reform and technology transitions proceedings. A stay primarily would serve to prolong the "geographic and per-minute charges and implicit subsidies [that are] fundamentally in tension with and a deterrent to deployment of all IP networks."¹¹ In fact, the Commission expressly has recognized that "if transport rates are allowed to persist, it gives incumbent LECs incentives to retain a TDM network architecture and therefore likely serves as a disincentive for incumbent LECs to establish more efficient interconnection arrangements such as IP."¹²

⁹ *Id.* at 12-13.

¹⁰ *ICC Transformation Order* ¶ 1297 (indicating that the FCC intended to "reach the [bill-and-keep] end state for all rate elements as soon as practicable").

¹¹ *ICC Transformation Order* ¶ 648; *see also id.* ¶ 783 ("We believe that an end point of a low uniform per-minute rate perpetuates the use of TDM networks, whereas our goal is to facilitate the transition to an all-IP network and to promote IP-to-IP interconnection.").

¹² *ICC Transformation Order* ¶ 820; *id.* ("the continuation of transport charges in perpetuity would be problematic").

CONCLUSION

For all of the reasons identified above, the stay requested by CenturyLink should be denied.

Respectfully submitted,

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